

STATE OF MICHIGAN
COURT OF APPEALS

JOHN G. BETLEY,

Plaintiff-Appellant,

v

CITY OF LINDEN,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 238385

Genesee Circuit Court

LC No. 01-070669-CZ

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Plaintiff, in propria persona, appeals as of right the circuit court's order granting defendant's motion for summary disposition, pursuant to MCR 2.116(C)(4), for lack of subject matter jurisdiction. We affirm.

Plaintiff initiated this action to dispute the city of Linden's authority to create a Special Assessment District and levy special assessments on affected property owners. The Linden City Council confirmed a special assessment roll with respect to properties located along a section of West Broad Street. The city thereafter levied special assessments to fund a portion of the reconstruction of the existing roadway, a new drainage system, and the installation of curbs, gutters, and sidewalks. Plaintiff owns real property within the special assessment district and was assessed \$2,914.35 for these "public improvements."

On June 20, 2001, plaintiff filed a complaint in the circuit court requesting in part that the special assessment district and the special assessments be set aside as invalid. In his complaint, plaintiff claimed that the city of Linden was a Home Rule City created by charter in 1988. He asserted that the city improperly created the special assessment district without the support of a majority of the property owners in the district.

Plaintiff alleged that the city violated its charter by assessing the cost of rebuilding a major county road to the abutting property owners. He further argued that the portion of the city's charter concerning confirmation of special assessment rolls violated the Michigan constitution, 1963 Const, art 9, § 31. Specifically, plaintiff noted that electors had no recourse or means of input. He also claimed that the charter's provisions allowed the city to evade constitutional limitations on its power to raise taxes. Plaintiff claimed that the existing roads, sidewalks, and sewer system were in good condition and that nearby homeowners and businesses received no benefit by their reconstruction. Moreover, he opined that any benefit to the

surrounding property owners was substantially outweighed by the general benefit to the entire population. In his summary, plaintiff claims that the city's "Special Assessment District is in reality a fraudulent tax perpetrated on the property owners of its Special Assessment District by multiple violations, misapplications, misrepresentations, and breaches of the Michigan Constitution, Michigan Statutes, Linden City Charter and the public trust."

The city asserted that the Tax Tribunal has exclusive jurisdiction over improper assessment claims.¹ In response, plaintiff asserted that the Tax Tribunal's jurisdiction does not extend to illegal acts by municipalities. Plaintiff argued that the city is not empowered to make the special assessments. The circuit court determined that the issues raised by plaintiff were outside its subject matter jurisdiction. It concluded that the city's authority to impose a special assessment under these circumstances was an issue reserved for the Tax Tribunal. The circuit court noted that plaintiff's complaint specifically requested relief with respect to tax assessments and the establishment of a special tax district.

On appeal, plaintiff argues that the trial court erroneously determined that it lacked subject matter jurisdiction. We disagree. A circuit court's grant or denial of summary disposition is subject to review de novo on appeal. *Speik v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Similarly, jurisdictional questions under MCR 2.116(C)(4) are reviewed de novo as questions of law. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

Circuit courts are courts of general jurisdiction with original jurisdiction over all civil claims and remedies, except when the constitution or a statute confers exclusive jurisdiction to another court. MCL 600.605; see also Const 1963, art 6, § 13; MCL 600.601. Pursuant to MCL 205.731(a), the Tax Tribunal has exclusive jurisdiction over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to . . . special assessments . . . under property tax laws." (Emphasis added). In *Johnson v Michigan*, 113 Mich App 447, 459; 317 NW2d 652 (1982), this Court determined that constitutional questions relating to the validity of property tax assessments were within the jurisdiction of the Tax Tribunal. While circuit courts retain jurisdiction in taxation matters to consider constitutional issues pertaining to the validity of tax laws, "[t]he tribunal may decide claims framed in constitutional terms alleging that a tax assessment was arbitrary and capricious and without foundation." *Johnston v City of Livonia*, 177 Mich App 200, 207; 441 NW2d 41 (1989).

In the instant case, plaintiff's complaint focuses on the city's alleged lack of authority under its charter to make the special assessments. He also opines in his complaint that the property owners received no benefit from the proposed "improvements." However, case law has consistently provided that challenges to the validity or foundation of a special assessment are within the jurisdiction of the Tax Tribunal. *Id.* at 205, 207; see also *Blaser v East Bay Twp*, 42

¹ We note that plaintiff attempted to petition the Tax Tribunal for review of his claims. However, the Tax Tribunal dismissed plaintiff's complaint with prejudice as untimely.

Mich App 249; 617 NW2d 742 (2000) (the validity of a petition for special assessments was addressed by the Tax Tribunal). In a similar case on point, *Eyde v Charter Twp of Lansing*, 420 Mich 287, 289-290; 363 NW2d 277 (1984), the plaintiffs argued in part that the special assessment imposed on their property for a new drain was invalid due to various defects in the assessment's imposition and the fact that their property did not receive a benefit. The Supreme Court disagreed and determined that the Tax Tribunal has exclusive jurisdiction over these types of claims. *Id.* at 292.

Plaintiff also alleges that his complaint was properly before the circuit court because he raised issues concerning the constitutionality of the city's actions. Specifically, he contends that the city violated the state constitution by levying a tax, disguised as a special assessment, without voter approval. Const 1963, art 9, § 31.² However, in determining jurisdiction, this Court "will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim." *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998). While framed in constitutional language, the crux of plaintiff's argument appears to be that the city imposed a tax, rather than a special assessment, because there were no particular benefits conferred upon the property owners. To be considered a valid special assessment, as opposed to a tax, the affected property must receive a benefit from the alleged improvement. See *Kadzban*, *supra* at 500-502. Again, the Tax Tribunal has jurisdiction to determine whether a benefit was conferred upon a plaintiff's property. See *id.* at 499, 502; see also *Eyde*, *supra* at 292.³

Because we find that the circuit court lacked subject matter jurisdiction, it is unnecessary to address plaintiff's remaining issue on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper

² Pursuant to MCL 600.308a, "[a]n action under section 32 of article 9 of the state constitution of 1963 may be commenced in the court of appeals, or in the circuit court" The Headlee Amendments prohibit local governments from levying new *taxes* or increasing existing *taxes* above the rate authorized by law or charter without approval of the majority of qualified electors within the district. See Const 1963, art 9, § 31. However, special assessments are not taxes. According to *Kadzban v The City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993):

A special assessment is a levy upon property within a specified district. *Although it resembles a tax, a special assessment is not a tax.* *Knott v City of Flint*, 363 Mich 483, 497; 109 NW2d 908 (1961). In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes. [Emphasis added.]

³ We note that plaintiff also argues on appeal that the city essentially committed an unnecessary taking without just compensation. However, plaintiff failed to raise this issue in his complaint. See *Etefia v Credit Techs, Inc*, 245 Mich App 466, 471-472; 628 NW2d 577 (2001).